IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEALLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3142 OF 2005

Shri.R.D. Ghadge. ..Petitioner.
Vs.
Mrs.Vijaya R. Ghadge and anr.
..Respondents.

Mr.S.A. Joshi holding for Ambar Joshi for the Petitioner.

CORAM : R.S. MOHITE,J.
DATED : 20/3/2006.

P.C.

1. This is a petition filed by the husband impugning an order of the lower court granting maintenance to the wife.

2. It appears from the record that the husband had filed petition under Hindu Marriage Act for grant of divorce. In that petition wife had filed an application under Section 24 of the said Act for interim maintenance and on 30.1.2003 interim maintenance was granted at Rs.700/- per month. Thereafter, the earlier proceeding under Section 125 of the Criminal Procedure Code was decided on 15.12.2004 and the Magistrate after taking into account the fact that some maintenance has been

granted in civil proceeding, based upon the evidence like 7/12 extract in respect of the land belonging to the petitioner and his family members granted maintenance to the tune of Rs.1200/- p.m. However, while granting maintenance he did not specifically refer to the exact amount of maintenance granted in civil proceeding. The revision filed by the petitioner was partly allowed and the revisional court passed an order on 9.5.2005 and after giving some adjustment considering the order passed by the civil court directed payment of maintenance at the rate of Rs.900/-p.m. from the date of filing of the application. I find from the record that in so far as order passed under Section 24 of the Hindu Marriage Act, the same has been decided in absence of any document. The order U/s. 125 of the Criminal Procedure Code which is subsequently passed on 15.12.2005 is based upon the evidence like 7/12 extract of the land belonging to the petitioner and his family members. That apart, the revisional court granted adjustment by taking into account the order passed on 30.1.2003 under Section 24 of the Hindu Marriage Act. Taking into consideration all the facts, enhancement of Rs.200/- in the maintenance amount granted by the civil court, by the revisional court cannot be said to be perverse.

3. Reliance was sought to be placed on a judgment of this court in the case of **Sanjay P. Niranjane Vs. Swati P. Niranjane reported in 2005(4) Mh.L.J. 122.** In that case by an order dated 30.6.2003 maintenance pendente lite under Section 24 of the Hindu Marriage Act has been granted. Section 125 proceeding was decided and disposed of subsequently by consent pursis agreeing to pay maintenance at the rate of Rs.1500/-p.m.. It was lower than the maintenance granted by the civil court. In the present case the maintenance granted under Section 125 of the Criminal Procedure Code is higher than the amount granted by the civil court. There is no consent pursis between the parties. In the circumstances, order which has been passed after making adjustment in the maintenance mount of the civil court cannot be said to be perverse. Hence, petition is rejected.

(R. S. MOHITE, J.)